



THE COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF  
TELECOMMUNICATIONS & ENERGY  
Cable Television Division**

**RATE ORDER**

CTV 05-1

Review by the Cable Television Division of the Department of Telecommunications and Energy of Federal Communications Commission Forms 1240 and 1205 filed by Cox Communications for the community of Holland, Massachusetts.

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APPEARANCE:

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FOR: COX COMMUNICATIONS  
Petitioner

## I. INTRODUCTION

On May 2, 2005, Cox Communications (“Cox” or “the Company”) filed with the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy proposed basic service tier (“BST”) programming rates on a Federal Communications Commission (“FCC”) Form 1240 for the Town of Holland, Massachusetts. This filing was accompanied by Cox’s nationwide FCC Form 1205 with proposed equipment and installation rates. By these filings, Cox proposed increases in its BST maximum permitted rate (“MPR”) for programming, and decreases in its MPRs, although not below the current operator selected rate, for equipment and for most installations (Exh. Cox-1, at 2, 4; Exh. Cox-2, at 7; compare Cox Com, Inc., CTV 04-2, at Exh. Cox-4, at 7). The Company elected not to change any of its operator selected BST programming, equipment and installation rates on its annual rate change date of August 1, 2005 (Exh. Cox-1, at Proposed Rate Structure; see Tr. at 6).

The Cable Division held a public and evidentiary hearing on Cox’s pending filings in Boston on January 18, 2006. There were no intervenors in this proceeding. The evidentiary record includes two Cox exhibits, five Cable Division exhibits, and the Company’s responses to record requests.

## II. REVIEW OF FCC FORM 1240

The FCC has created specific forms incorporating the provisions of its rate regulations, upon which a cable operator must calculate its rates. The FCC Form 1240 allows a cable operator to annually update its BST programming rates to account for inflation, changes in external costs, and changes in the number of regulated channels. In order that rates be

adjusted on the FCC Form 1240 for projections in external costs, or for projected changes to the number of regulated channels, the cable operator must demonstrate that such projections are reasonably certain and reasonably quantifiable. 47 C.F.R. §§ 76.922(e)(2)(ii)(A) and 76.922(e)(2)(iii)(A). Cable operators may also project for increases in franchise related costs to the extent they are reasonably certain and reasonably quantifiable; however, such projections are not presumed to be reasonably certain and reasonably quantifiable. 47 C.F.R. § 76.922(e)(2)(ii)(A).

The standard under which the Cable Division must review rate adjustments on the FCC Form 1240 is found in the FCC's rate regulations. Specifically, the rate regulator shall assure that the rates comply with the requirements of Section 623 of the Communications Act of 1934, as amended. 47 U.S.C. § 543; 47 C.F.R. §§ 76.922, 76.923, and 76.930. The Cable Division may accept, as in compliance with the statute, BST rates that do not exceed the "Subsequent Permitted Charge" as determined by federal regulations. See 47 C.F.R. § 76.922(c). In addition, the Cable Division shall only approve rates it deems reasonable. G.L. c. 166A, §§ 2, 15; 47 U.S.C. § 543; 47 C.F.R. §§ 76.937(d) and (e); see also 47 C.F.R. § 76.942.

The burden of proof is on the cable operator to demonstrate that its proposed rates for BST programming comply with Section 623 of the Communications Act of 1934, as amended, and implementing regulations. 47 U.S.C. § 543; Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Report and

Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 93-177, 8 FCC Rcd 5631, at 5716, ¶ 128 (1993) (“Rate Order”); see also 47 C.F.R. § 76.937(a).

On its FCC Form 1240, Cox proposed an increase in its BST MPR from \$10.27 to \$10.40 (Exh. Cox-1, at 2, 4, Tr. at 6). Cox also proposed to continue, unchanged, its current operator selected BST rate of \$10.27 (Exh. Cox-2, at 4, Tr. at 6). Based on our review of Cox’s FCC Form 1240, as well as the Company’s responses to inquiries, the Cable Division determines that this form was prepared in compliance with federal laws and regulations. As such, we conclude that the BST MPR established by the FCC Form 1240 is just and reasonable and in compliance with applicable law.

### III. REVIEW OF THE FCC FORM 1205

#### A. Standard of Review

The FCC Form 1205 establishes rates for installations and equipment, such as converters and remote controls, based upon actual capital costs and expenses. Instructions for FCC Form 1205, at 7, 12-13. The FCC Form 1205 is prepared on an annual basis using information from the cable operator’s previous fiscal year. Id. at 2. Subscriber charges established by the FCC Form 1205 shall not exceed charges based on actual costs as determined in accordance with the FCC’s regulatory requirements. 47 C.F.R. § 76.923(a)(2). As with the FCC Form 1240, the burden of proof is on the cable operator to demonstrate that its proposed rates for equipment and installations comply with Section 623 of the Communications Act of 1934, as amended, and implementing regulations. 47 U.S.C. § 543; Rate Order at 5716, ¶ 128 (1993); see also 47 C.F.R. § 76.937(a).

B. Rate Treatment of Converter Repairs by Outside Contractors

The FCC Form 1205 Instructions require cable operators that elect to recover, in their BST rates, the costs associated with equipment sent out for repair by outside contractors to estimate the number of hours the outside contractors spent making these repairs. Instructions for FCC Form 1205, at 14, Step A, Note 1. During the proceeding, two questions arose concerning these outside repair hours. First, we questioned whether Cox had included these labor hours on its FCC Form 1205. Second, we questioned whether Cox had correctly calculated its outside repair hours, in accordance with the FCC's Instructions. We address each issue separately.

Cox reviewed its FCC Form 1205, and determined that while its estimate of 134,056 hours for outside converter repairs had been included in the Step A hourly service charge ("HSC") calculation, these estimated hours had not been included at Schedule C, Line B "Total Maintenance/Service Hours" (RR-CTV-1).<sup>1</sup> Since all converter repair hours must be included on both Schedule C and Step A, Cox corrected this omission by adding these hours to the in-house maintenance hours reported for addressable/digital converters on Schedule C, Line B (id., see Instructions for FCC Form 1205, at 12, 14). Cox then brought these new total hours forward to Step D, and calculated a new MPR for its addressable/digital converters (id.). This recalculated MPR was \$5.93, compared with the original MPR of \$5.78 (id.). The

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<sup>1</sup> Cox also provided an analysis of its total labor hours for the maintenance and installation of customer equipment (RR-CTV-2, Attachment A). Cox's analysis confirms that its estimated outside contractor repair hours were actually included as part of the total hours included on Step A.

Company submitted a revised FCC Form 1205 that included this recalculation (id., Attachment). The Cable Division finds that Cox's corrected treatment of converter repair hours on its FCC Form 1205 complies with the FCC Form 1205 Instructions. Cox's amended rate form correctly includes its estimated outside contractor repair hours.

We now consider whether Cox correctly estimated the outside contractor wage rate that it used to calculate its outside converter repair hours. The Instructions to FCC Form 1205 require cable operators to estimate the number of "equivalent labor hours" spent by outside contractors repairing converters that are sent out for repair. Instructions for FCC Form 1240, at 14, at Step A, Note 1. This results in an equating, for regulatory purposes, of equipment repairs performed by in-house technicians and those performed by outside contractors. On FCC Form 1205, a cable operator's total capital costs and operating costs are divided by the total number of installation and repair hours to derive the HSC. See FCC Form 1205 at 4, Step A, Note 1. The total number of repair hours are also used to establish the monthly lease rate for each category of leased equipment. See FCC Form 1205 at 5, Step C (Remotes), Step D (Converter Boxes). Therefore, a cable operator's total equipment repair hours impacts both the HSC and the monthly converter lease rate.

The FCC Form 1205 Instructions specify that equivalent labor hours "may be calculated, for example, as total costs included on Schedule B for work sent out for repair divided by the average company technician wage rate." Instructions for FCC Form 1205, at 14, Step A, Note 1. Cox explained that it had used an hourly rate of \$45.70 in its calculation (RR-CTV-1). However, Cox also reported that its average internal technician wage

rate was only \$21.63 per hour (RR-CTV-3(A)). Cox explained that the \$45.70 hourly rate was a “national estimate” that was based on Cox’s average technician hourly wage rate of \$21.63, plus a number of adjustments: benefits (\$6.71), supervisory labor/overhead (\$1.08), repair parts (\$8.66), and a 20 percent vendor profit margin (\$7.62) (RR-CTV-3). Thus, Cox’s calculation not only includes the “average company technician wage rate” specified by the Instructions, but a number of additional components. See Instructions for FCC Form 1205, at 14.

Cox states that it does not interpret the Instructions as providing the only acceptable method to calculate outside converter repair hours (RR-CTV-4(A)). Cox argues that because its equipment repair and maintenance expenses reported on the FCC Form 1205 include external contractor costs including parts and profit, in addition to labor, these items must be included in the hourly rate, or else the number of equivalent labor hours would be overstated (id., see Exh. Cox-2, at 2, Schedule B, Other 2). Cox, however, did not provide the Cable Division with sufficient support that the use of Cox’s average company technician wage rate, with additional components, to calculate outside contractor repair hours was reasonable. Nevertheless, we need not address the merit of Cox’s argument at this time. Even though Cox’s addressable/digital converter rate has increased because of the inclusion of the previously omitted hours from Schedule C, the Company has selected a converter rate that is below the rate that would have been calculated had the additional costs not been included. Furthermore, any increase in the outside repair hours that would result from a lower outside

contractor wage rate,<sup>2</sup> while providing a small decrease in the installation rates, would conversely increase the monthly converter lease rate, which affects far more subscribers than the installation rates. Installation rates are typically one-time charges that are often waived.

Therefore, we will accept Cox's equipment and installation rates in Holland as reasonable, but for the reasons stated above, we will not accept, at this time, the methodology that Cox used to determine its converter repair hours for outside contractors. Accordingly, we will accept Cox's equipment and installation rates in Holland, but we will not accept the FCC Form 1240 itself. Cox is put on notice that in future proceedings, we will require additional evidence that supports the method Cox used to calculate outside converter repair hours.

C. Monthly Lease Rate for Basic-Only Converters

On its FCC Form 1205, Cox proposed MPRs for five types of converter boxes (Exh. Cox-2, at 7). Three of these proposed MPRs were for advanced high definition converters and ancillary equipment; the other two were for "Addressable/Digital" converters, which have a proposed MPR of \$5.78, and an "Analog Box," which has a proposed MPR of \$0.20 (*id.*). Cox has not established a separate converter rate for those Holland subscribers with basic-only service who require a converter to receive cable service (Tr. at 16-17). Instead, if such subscribers must rent a converter, they are charged the standard monthly lease

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<sup>2</sup> The outside maintenance hours are computed by dividing the total equipment maintenance and repair expenses by the hourly wage cost (RR-CTV-1). Therefore, if the hourly wage cost were decreased through the removal of the additional outside contractor wage adjustments, the number of hours would increase.



rate for addressable and digital converters of \$4.20 per month (id. at 17). The Company explained that the Analog Box is a nonaddressable analog converter, which is not offered to Cox's New England subscribers (id. at 18). Cox observed that its FCC Form 1205 is a national filing, and that other divisions of the Company might provide nonaddressable analog converters (id. at 18-19).

The Telecommunications Act of 1996 allows cable operators to aggregate their equipment costs into broad categories, regardless of the varying levels of functionality of the equipment, on a franchise, system, regional or company level. 47 U.S.C. § 543(a)(7)(A). However, the Act specifically provides that “[s]uch aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic service tier.” Id. Congress specifically directed the FCC to implement this requirement in a rule.

47 U.S.C. § 543(a)(7)(B). Accordingly, the FCC's rate regulations provide that the costs of customer equipment used by basic-only subscribers may not be aggregated with the costs of equipment used by non-basic-only subscribers, although such costs may be aggregated on a franchise, system, regional or company level. 47 C.F.R. § 76.923(c)(2). In adopting this regulation, the FCC stated: “[w]e conclude that Congress intended to ensure that basic-only subscribers not bear the costs of equipment used by subscribers taking services in addition to basic.” Implementation of Section 301(j) of the Telecommunications Act of 1996: Aggregation of Equipment Costs by Cable Operators, 11 FCC Rcd 6778, FCC 96-257, at 6789, ¶ 23 (1996). The Cable Division has enforced this rule, and required other cable operators to

establish a basic-only converter rate. Charter Communications Entertainment I, L.L.C., CTV 01-8, at 8-9 (2002).

Cox is not currently offering a non-aggregated converter rate to its basic-only subscribers in Holland, even though its FCC Form 1205 includes a lower rate for non-aggregated analog converters. We direct Cox to either specifically establish a separately calculated converter rate for basic-only subscribers in Holland, or else offer basic-only subscribers a converter without any charge. If Cox should choose to establish a rate for basic-only converters, it must follow the FCC's rule for basic service tier only equipment, at 47 C.F.R. § 76.923(c)(2), which specifically provides a cable operator with two alternative methods. One, Cox may calculate an MPR by aggregating the costs of those converters actually leased to basic-only subscribers, even if the converters are of different types. Id. Alternatively, Cox may base its rate on the assumption that all basic-only subscribers use converters that are the lowest level and least expensive model that the Company offers subscribers, even if some basic-only subscribers actually have higher level, more expensive converters. Id. Cox has already proposed an MPR for its least expensive converter, the analog box. Under the second alternative, Cox could continue to provide more expensive converters to basic-only subscribers, but charge these subscribers either the MPR for its analog box, or a rate lower than the analog box MPR. However, if Cox proposes to establish a new rate based on the FCC's first alternative, it must submit an amended FCC Form 1205 to support this proposed rate. We direct Cox to submit for our approval an explanation of its

proposed policy for converters provided to basic-only subscribers, and, if necessary, an amended FCC Form 1205.

D. The Company's Proposed Converter Rate Increase

On its FCC Form 1205, the Company proposed an MPR of \$5.78 for its addressable and digital converters (Exh. Cox-2, at 7). Under the FCC's regulations, Cox could have raised its converter rate on its annual rate change date of August 1, 2005, subject to review and refund. See 47 C.F.R. § 76.933(g)(2). At the time that Cox prepared and filed its FCC Form 1205, it had not intended to increase its monthly converter rate of \$4.20 (Tr. at 6; see Exh. Cox-1, at Proposed Rate Structure). However, after the FCC Form 1205 was submitted, the Company decided to increase its operator-selected rate for digital equipment to \$4.95 (id.).

Cox's proposal raises the issue of whether the FCC's rules permit the Company to change one of its rates on a date other than its annual rate change date, and if so, what effect this change, if any, would have on Cox's next filing. The FCC has held that its rules do not require that the change in the actual rate must only take place at the end of the 90-day period. Frontiervision Operating Partners, 18 FCC Rcd 20416, DA 03-3127, at ¶ 12 (2003), ("Frontiervision"); application for review denied, Frontiervision Operating Partners, 19 FCC Rcd 23096, FCC 04-264 (2004); affirmed sub nom City of Winchester et al. v. FCC: Memorandum Opinion, Case No. 05-3083 (6<sup>th</sup> Cir., March 23, 2006)(unpublished). In Frontiervision, the cable operator had increased its BST rates to the MPR over nine months after the end of the 90-day review period. Frontiervision at ¶¶ 6-9. In approving these rate

increases, the FCC stated that its rules generally protect subscribers from rate increases more than once a year, and the cable operator had not increased its BST rate in the affected communities in more than a year. Id. at ¶ 16. The FCC also ruled that after changing its rates, the cable operator “has precluded itself from changing its rates again” for another year. Id. Since August 1, 2003, Cox has been charging a rate of \$4.20 for addressable and digital converters in Holland. CoxCom, Inc., CTV 03-2, at Rate Schedule (2004); CoxCom, Inc., CTV 04-2, at 5 (2004). Accordingly, because Cox has not changed this rate in more than a year, the Cable Division finds that Cox is entitled to increase its addressable/digital converter rate. Such a rate change may only take place after 30 days’ notice, see 47 C.F.R. § 76.1603(c); 207 C.M.R. § 10.02(2). Accordingly, Cox may increase its monthly charge for addressable/digital converters to \$4.95 during the month of May 2006. After this increase, Cox may not change its rate again for an entire year, that is, until May 2007.

Cox’s proposed increase in its addressable/digital converter rate raises issues concerning the timing of the Company’s next rate filing and rate changes in Holland. Historically, Cox has filed its FCC Forms 1240 and 1205 on or about May 1 for a rate change on August 1. While Cox would ordinarily be permitted to make its next rate filing on May 1, 2006, for a rate change on August 1, 2006, the Company’s change of an equipment rate in May 2006 may affect the permissible date that Cox can make its next filing and rate change. We need not resolve these issues here, because we have not provided Cox with an opportunity to consider and respond. However, Cox’s next rate filing should be accompanied with a thorough analysis of the appropriateness of that filing date.

### III. CONCLUSION AND ORDER

Upon due notice, hearing and consideration, the Cable Division hereby accepts Cox's FCC Form 1240, as filed on May 2, 2005, for the Town of Holland.

Further, after review and consideration, the Cable Division hereby accepts Cox's proposed equipment and installation rates, as submitted on the FCC Form 1205 submitted as an attachment to RR-CTV-1, for the Town of Holland.

Further, upon review and consideration, the Cable Division hereby directs Cox to submit for approval a proposed policy for converters provided to basic-only subscribers, and, if necessary, an amended FCC Form 1205.

The attached rate schedule provides Cox's previous and current actual rates, as well as its proposed and approved maximum permitted rates.

**By Order of the  
Department of Telecommunications and Energy  
Cable Television Division**

/s/ Alicia C. Matthews  
**Alicia C. Matthews**  
**Director**

Issued: April 7, 2006

**Cox**  
**Basic Service Tier Programming and Equipment Rates**  
**Town of Holland**

Service	Previous Rate	Current Rate Effective August 1, 2005	Proposed Maximum Permitted Rate	Approved Maximum Permitted Rate
Basic Tier Rate	\$10.27	\$10.27	\$10.40	\$10.40
Addressable/Digital Converter	\$4.20	\$4.20	\$5.78	\$5.78
Analog Converter	not offered	not offered	\$0.20	\$0.20
HD Converter	\$9.99	\$9.99	\$10.84	\$10.84
PVR Converter	\$9.99	\$9.99	\$12.39	\$12.39
HD/PVR Converter	\$9.99	\$9.99	\$13.51	\$13.51
Remote Control	\$0.20	\$0.20	\$0.30	\$0.30
Hourly Service Charge	\$51.46	\$51.49	\$51.49	\$51.49

### **RIGHT OF APPEAL**

Appeals of any final decision, order or ruling of the Cable Division may be brought within 14 days of the issuance of said decision to the full body of the Commissioners of the Department of Telecommunications and Energy by the filing of a written petition with the Secretary of the Department praying that the Order of the Cable Division be modified or set aside in whole or in part. G.L. c. 166A, § 2, as most recently amended by St. 2002, c. 45, § 4. Such petition for appeal shall be supported by a brief that contains the argument and areas of fact and law relied upon to support the Petitioner's position. Notice of such appeal shall be filed concurrently with the Clerk of the Cable Division. Briefs opposing the Petitioner's position shall be filed with the Secretary of the Department within seven days of the filing of the initial petition for appeal.